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SURFACE ACCESS ISSUES

Robert M. Honea

SURFACE ACCESS ISSUES

Everyone involved in the oil and gas industry is familiar with the proposition that the mineral estate is the dominant estate, and the corollary proposition that the owner of the minerals therefore has the right to make “reasonable” use of the surface for the purpose of developing the minerals. Everyone involved in the oil and gas industry is just as familiar with the proposition that an oil and gas lease carries with it, either expressly or by operation of an implied covenant, the mineral owner’s right to make “reasonable” use of the surface. It would therefore appear that this topic could be addressed in one sentence – buy the minerals or buy a lease, and your surface access problems are solved. Unfortunately, in the real world things are never as simple as they seem. This paper will be devoted to a discussion of the practical problems of surface access inevitably encountered in the real world.

I. THE FIRST RULE OF SURFACE ACCESS

READ THE LEASE

READ THE JOA

**READ THE DECLARATION OF
POOLING**

READ THE POOLING ORDER

The first rule which must be applied to any surface access problem is very simple: Unless you happen to be the owner of the minerals, you have acquired your right to explore for and develop the mineral estate in one or more of three ways: (1) Taking an oil and gas lease from the mineral owner; (2) securing the mineral owner's (or his lessee's) voluntary participation pursuant to a joint operating agreement; or, (3) integrating or force-pooling the mineral owner (or his lessee). In all three cases, there are written documents which spell out the rights you have acquired. In all three cases, with only rare exceptions, the documents will say something about surface access. The problem is that what the documents say about surface access may or may not be consistent with the general rule that the mineral estate is the dominant estate. For example, a mineral owner is perfectly entitled to negotiate a "no surface access clause," and if he is successful, the clause will be enforced. The point is that a theoretical discussion about the dominant rights of the mineral estate is irrelevant, if the documents say something else. Whenever you encounter a surface access problem, before you contact the surface owner, your boss, the Commission, or the company attorney, you should therefore always apply the first rule of surface access – **READ THE DOCUMENTS!**

II. OKLAHOMA'S SURFACE DAMAGES ACT

In 1982, Oklahoma adopted a comprehensive surface damages act, OKLA. STAT. tit. 52, § 318.1-318.9 (the "Act"). As the Act has been construed by subsequent decisions of the Oklahoma Supreme Court, the net effect of the Act is exactly the opposite of the common law rule. Under the Act, an operator is liable to the surface owner for what amounts to the fair market value of the surface utilized for "reasonable" drilling

operations. Because the Act resulted in a such a dramatic change in the relationship between the surface owner and the oil and gas lessee, it provides a useful framework for analyzing the majority of the issues falling within the topic of this paper. The balance of the discussion under this heading will therefore be devoted to a summary of the law which existed prior to the passage of the Act, the Act itself, and the subsequent cases construing the Act.

A. THE COMMON LAW RULES.

Prior to the passage of the Act, Oklahoma followed the usual common law rules concerning the dominant nature of the mineral estate. Under those rules, the mineral owner was entitled to make reasonable use of the surface, and was not responsible for compensating the surface owner for any resulting damages. Conversely, the mineral owner was liable for “unreasonable” uses of the surface.

“The grant, or reservation, of the right to operate for oil and gas carries with it, as an incident, the right to the use of the premises to an extent reasonably necessary for that purpose. Consequently, the damage to the soil, trees, or crops, upon the land, which is incidental to and the result of such reasonable operations, is *damnum absque injuria*, and no recovery can be had therefor against the operator. The lessee, however, is liable for damages to the surface resulting from the negligent, as distinguished, from reasonable, use.

. . . An oil and gas operator would be held liable for surface damages only if such damages resulted from wanton or negligent operations or if the operations affected a more than reasonable area of the surface.”

Davis Oil Company v. Cloud, 766 P.2d 1347 (Okla. 1986), and cases cited therein.

Under the common law, the surface owner had the burden of proving that the mineral owner’s actions were “unreasonable.” If the surface owner was successful in establishing that the operations were unreasonable, the surface owner was then entitled to

recover damages on any one of a number of common law theories, including negligence, nuisance, and trespass. If the surface owner was not successful in sustaining his burden of proving that the use was unreasonable, however, the surface owner received nothing. As a practical matter, local juries typically found anything the operator did was unreasonable, and awarded damages. At the same time, however, the damages awards were often overturned on appeal. See, e.g., *Cities Service Oil Co. v. Dacus*, 325 P.2d 1035 (Okla. 1958). The end result was a real world situation in which trying to make “reasonable” use of the surface without paying for it required litigating the matter all the way to the Oklahoma Supreme Court. In light of the fact that the cost and expense of litigating a case through an appeal to the Supreme Court was usually more than a settlement would cost, companies usually tried to settle surface damage claims rather than insist on their legal right to make a reasonable use of the surface without paying compensation.

B. THE SURFACE DAMAGES ACT.

In 1982, Oklahoma adopted a comprehensive surface damages act. The Act requires that the operator give notice of intent to drill. If the operator cannot find the surface owner after conducting a “search with reasonable diligence,” notice of intent to drill may be given constructively. Within five days after notice of intent to drill, the operator and the surface owner must enter into “good faith” negotiations to settle the surface damage claim. If the negotiations are not successful, the operator must file a Petition in District Court, seeking the appointment of appraisers. Upon filing the Petition, the operator “may enter the site to drill.”

The appraisal process requires the operator to pick an appraiser, the surface owner to pick an appraiser, and the two appraisers then select a third appraiser for appointment by the Court. The operator and surface owner share the cost of the appraisers equally. The appraisers then report to the Court their findings concerning damages.

If either party is dissatisfied with the appraisal, they can either appeal the appraisers' decision or they can ask for a jury trial.

If the party requesting a jury trial, however, does not get a better verdict from the jury than it got from the appraisers, that party is liable for court costs, including attorneys' fees.

Before commencing the process required by the Surface Damages Act, operators are required to post a bond in the amount of \$25,000.00 to secure payment of the amount ultimately awarded.

Finally, the Act provides that an operator who willfully violates the provisions of the Act is subject to treble damages.

In summary, the Act clearly requires that operators compensate surface owners for the use of the surface, regardless of whether the use is reasonable or unreasonable, and sets forth a method for determining the amount of that compensation.

C. IS THE ACT CONSTITUTIONAL?

Initially, there were substantial questions as to the constitutionality of the Act. Operators argued that under existing leases, they had a vested contractual right to make reasonable use of the surface without having to pay for it. Operators therefore argued that if the Act was applied retroactively it would amount to an unconstitutional taking of their property without due process of law (specifically payment of compensation for the

property taken). In an unreported court of appeals decision, the Oklahoma Court of Appeals expressed grave concerns concerning the constitutionality of the Act for these very reasons, albeit *in dicta*. *Bowles v. Kretchmar*, Case No. 59656, May 1, 1984, Court of Appeals of Oklahoma. Interestingly, in that case the court concluded that it did not have to address the constitutional issues, because the Act expressly provided that it did not apply to existing contracts (i.e., leases). Because the *Bowles* case involved a lease that was executed prior to the effective date of the Act, the *Bowles* court concluded that the Act did not apply to the lease. The specific language of the Act relied on by the *Bowles* court read as follows:

Section 318.7. Effect of Act on existing contractual rights and contracts to establish correlative rights . . .

Nothing herein contained shall be construed to impair existing contractual rights nor shall it prohibit parties from contracting to establish correlative rights on the subject matter contained in this Act.

The foregoing language would appear to be clear and unambiguous. First, the Act does not affect existing contractual rights, i.e., it is prospective in application only. Second, the Act does not prohibit the parties from entering into their own agreement concerning surface damages, as part of the lease. When the Oklahoma Supreme Court addressed the constitutional issues, however, it gave this section of the statute a quite different interpretation. See *Davis Oil Company, infra*.

The question marks surrounding the constitutionality of the Act were definitively addressed and resolved in *Davis Oil Company v. Cloud*, 766 P.2d 1347 (Okla. 1986). In a 5 to 4 decision with a vigorous dissent, the Oklahoma Supreme Court held that the Act was constitutional. Moreover, the Court held that the Act was to be applied retroactively,

i.e., that it governed both leases executed after the Act and leases executed before the Act.

“We thus find that the standard of liability for damage to the surface estate flowing from the exercise of the mineral estate holder’s right to enter and use the land was a subject clearly susceptible to modification by exercise of the state’s police power.

. . . The passage of the Surface Damages Act guarantees that the development of one industry is not undertaken at the expense of another when the vitality of both is of great consequence to the well-being of our economy. In times when both the agricultural and oil and gas segments of our economy are suffering it is especially important that such legislation is enforced.

We thus find no merit in appellant’s assertions that the application of the Surface Damages Act to existing leases serves no legitimate public interest.”

The Court dismissed in a footnote the argument that § 318.7 of the Act prohibited retroactive application of the Act to leases executed before the effective date of the Act.

The Court’s comment was as follows:

“As we read the cases previously cited to state that one may not maintain a claim of vested contractual rights in a common law standard of liability where the standard is claimed to be impliedly contained in a contract we read the provisions of 52 O.S. Supp. 1982 § 318.7 as only applying to contracts in which damage provision standards are specifically set forth in the contract.”

Apparently, the Oklahoma Supreme Court read § 318.7 of the Act as meaning only that if the parties specifically and clearly state their own agreement for the resolution of surface damages in their contract, then the Act does not apply. See also *Alpine Construction Corporation, infra*, where the Oklahoma Supreme Court stated in a footnote that “[t]he right of the parties to contract regarding payment for surface damages has been impliedly recognized by the Legislature. See O.S. Supp. 1982 § 318.7.”

The Oklahoma Supreme Court's reading of § 318.7 of the Act seems strange, to say the least. Nevertheless, it is clearly the holding of the Oklahoma Supreme Court on the matter, and therefore the law of the State of Oklahoma.

In summary, *Davis v. Cloud* holds that the Act is constitutional, and that it applies to all drilling operations conducted after the effective date of the Act, regardless of when the lease was executed or the mineral ownership was acquired. In addition, the decision finds that the parties are free to reach their own agreement concerning surface damages, and that any such agreement will be upheld and enforced.

D. DOES THE ACT APPLY TO ALL SURFACE USES?

Interestingly, it turns out that the Act does not apply to all surface uses. In *Anschutz Corporation v. Sanders*, 734 P.2d 1290 (1987), the surface owner sought to recover damages under the Act for seismic operations. The Oklahoma Supreme Court held that the Surface Damages Act does not apply to seismic operations.

“The right of entry for the purpose of exploration has been previously recognized as part of Oklahoma decisional law. The legislation which appellant argues derogates that right is specifically addressed only to drilling and production operations. To infer an intent of the legislature that this statutory scheme was also to function to limit the right to engage in exploratory activities is not a permissible result.”

The Court went on to hold that the surface owner was entitled to the usual common law remedies. In other words, the surface owner would still be entitled to assert that the surface use was “unreasonable,” and recover damages if successful in proving that allegation. If the use was “reasonable,” however, the surface owner was not entitled to any compensation.

A recent Court of Appeals decision blurs the line even further. In *Vastar Resources, Inc. v. Howard, et al.*, 38 P.3d 236 (Okla. Civ. App. 13, 2002), the Court was

confronted with a situation in which the landowners sought to recover damages under the Surface Damages Act for pollution of their lands. The Court held that this was not a proper subject of recovery under the Surface Damages Act.

“Landowners are entitled to full compensation for Vastar’s drilling operations on their property. However, an action brought under the Surface Damages Act is limited by the Act to the surface damages which the owner has sustained or will sustain due to entry upon the land and drilling operations thereon. The remedy for injury to landowners’ land caused by Vastar’s allegedly willful or negligent conduct is through a separate and distinct cause of action, not one brought under the Act.”

The foregoing decision suggests that the Surface Damages Act applies only to drilling operations, and further applies only to damages for “reasonable” use of the surface. It would therefore appear that if the surface use is not “drilling operations,” or if the surface use is “unreasonable,” the surface owner is left with the common law remedies, and the Surface Damages Act does not apply. Indeed, the Oklahoma Supreme Court has stated *in dicta* the Act only applies to “. . . oil and gas drilling and preparations for drilling.” *Alpine Construction Corporation v. Fenton*, 764 P.2d 1340 (Okla. 1988). Note that pipelines would therefore not be included within the scope of the Act.

In summary, it appears that the Act applies only to access roads and the drill site. Pipelines, seismic operations, “unreasonable” uses (such as pollution or using more land that is “reasonably necessary”), and anything else that is not “drilling operations,” are governed by the old common law rules.

E. WHAT IS THE MEASURE OF DAMAGES UNDER THE ACT?

Davis v. Cloud, supra, approved a jury instruction which listed eight factors to be considered in awarding surface damages. The instruction read:

Factors which you may consider in determining damages include the following, if shown by a preponderance of the evidence:

1. The location or site of the drilling operations.
2. The quality and value of the land used or disturbed by said drilling operations.
3. Incidental features resulting from said drilling operations which may affect convenient use and further enjoyment.
4. Inconvenience suffered in actual use of the land by OPERATOR.
5. Whether the damages, if any, are temporary or permanent in nature.
6. Changes in physical condition of the tract.
7. Irregularity of shape and reduction, or denial, of access.
8. The destruction, if any, of native grasses, and/or growing crops, if any, caused by drilling operations.

These are not to be considered as individual items of damages, but as they may, in your opinion affect the fair market value of the tract after the drilling operations in this case.

There have been a fair number of cases decided since the Act was passed. A summary of all of the cases applying the Act is set forth in a paper prepared by John Gunter at Marathon Oil Company and Mark Christiansen at Crowe and Dunlevy, which they presented to the Eugene Kurtz Conference on Natural Resources Law & Policy – 2002 in Oklahoma City on November 1, 2002.

III. SURFACE ACCESS IN ARKANSAS

Oklahoma has a surface damages act that is twenty years old and has been relatively well defined by the cases. What does Arkansas have?

The short answer to this question is “Nothing.” In Arkansas, the old common law rules still apply. See, e.g., *Diamond Shamrock Corp. v. Phillips*, 256 Ark. 886, 511

S.W.2d 160 (1974). As a practical matter, this means that if a surface owner is unhappy, he is absolutely entitled to bring suit and have a jury decide whether or not the operations are “reasonable.” As everyone in the industry is well aware, local judges and local juries almost universally find that the use is unreasonable, and give the surface owner something. Although these decisions are often appealable, and winnable on appeal, as a practical matter litigating the issue doesn’t make a lot of sense. Why incur legal expenses to take a case all the way to the Arkansas Supreme Court, when it can be settled for a few thousand dollars? The end result is that companies in Arkansas typically settle surface damages claims as if the landowner had a substantive right to compensation, even though the surface owner clearly does not.

Arkansas does have a couple of statutes which are pertinent. First, Arkansas requires that an operator give notice to the surface owner “[b]efore entering upon a site for the purpose of exploration or for oil or gas drilling.” A.C.A. § 15-72-203. The notice is to be given by certified mail or personally, at the address reflected on the tax collector’s records. Arkansas also has a statute granting the surface owner a lien on the well for damages caused by “. . . the neglect of the operator . . .,” as well as a procedure for filing a claim with the Arkansas Oil and Gas Commission for recovery of “. . . damages caused by the neglect of the operator . . .” out of the operator’s bond, A.C.A. § 15-72-214.

IV. THE ACCOMMODATION DOCTRINE

In 1971, the Texas Supreme Court decided the case of *Getty Oil Co. v. Jones*, 470 S.W.2d 618 (Sup. Ct. Texas 1971). In that case, the surface owner (a farmer) had installed a very expensive pivot irrigation system. The mineral owner wanted to put a

pump jack on a well in the farmer's field. The pump jack would be high enough that the pivot would not be able to pass over the pump jack. It was feasible, however, albeit more expensive, for the mineral owner to utilize a different method for pumping the well, which would not interfere with the pivot irrigation system. The Texas Supreme Court found that the mineral owner was required to make "reasonable accommodations" with the surface owner, and in particular that the mineral owner was required to use a pumping system that did not preclude the operation of the farmer's pivot irrigation system. The concepts discussed in this case have come to be called the "Accommodation Doctrine."

Arkansas has at least approved the idea, if not adopted it wholeheartedly. In *Diamond Shamrock Corp. v. Phillips*, 256 Ark. 886, 511 S.W.2d 160 (1974), the surface owner sought to recover damages on the ground that the mineral owner had put the well site in the precise location where the surface owner intended to build their dream home. All of the parties apparently agreed that the actual operations were not unreasonable. The only aspect of the mineral owner's activities which was claimed to be unreasonable was the mineral owner's selection of a drill site. According to the homeowner, the mineral owner could have put the drill pad in a different location, at no or little additional expense, without adversely affecting the mineral owner's ability to develop oil and gas. The jury agreed, and awarded damages accordingly. The Arkansas Supreme Court affirmed, citing as support for its decision the *Getty* case. In addition, the Court quoted with approval the following language from a 1929 Arkansas case: "In *Martin v. Dale*, 180 Ark. 321, 21 S.W.2d 428 (1929), we said the driller had a right to ingress and egress but in exercising that right 'it was his duty to do so in the manner least injurious to his grantor . . .'"

There are a number of other cases discussing the Accommodation Doctrine which may be found in the treatises. They are necessarily unique, each one depending upon the precise facts presented. The common thread of the cases, however, is that if the mineral owner can “reasonably” accommodate a surface owner’s request, the mineral owner has a duty to do so, or pay damages. Of course, this is yet another instance in which a standard of “reasonableness” is to be applied, which generally means a jury trial, which generally means the mineral owner loses. In any event, if a mineral owner encounters a situation where the drill site and access road can be located in either of two different locations, and the surface owner cares very strongly about which one is picked, the surface owner gets to choose. Please note, however, that this does not mean that the mineral owner must abide by the surface owner’s decision. Rather, it only means that the mineral owner must either abide by the surface owner’s decision or pay damages, based on fair market value, for the option the landowner opposes.

If you want to learn more about this topic, there is an excellent Law Review article which was recently published in the Oklahoma Law Review. *Surface Use by the Mineral Owner: How Much Accommodation is Required under Current Oil and Gas Law?*, 55 Okla. L. Rev. 89 (Spring, 2002).

V. **FORCE-POOLING IN OKLAHOMA AND INTEGRATION IN ARKANSAS – WHAT EFFECT DO THEY HAVE ON SURFACE OWNERS?**

This is an issue as to which everyone has questions, and no one has answers. It is certainly an open question in Arkansas, and is the subject of markedly differing opinions.

The fundamental question is whether or not the Commission has constitutional authority to tell a surface owner what can and cannot be done with his property.

Everyone is familiar with the proposition that the State cannot take a person's property without due process of law, and in particular without paying compensation for any property taken. U.S. Const. amend. XIV, § 1; Ark. Const. art. II, § 17. Everyone is also familiar with the concept of *ex post facto* legislation, i.e., that the State cannot enact legislation which takes away a party's vested rights under a contract. Ark. Const. art. II, § 22. Finally, everyone is familiar with the right to jury trial. Ark. Const. art. II, § 7. It would therefore appear that the Commission, as a branch of the government of the State, would be constitutionally prohibited from forcing a surface owner to give up his property rights. On the other hand, the courts have consistently recognized the authority of the State, in the exercise of its police power, to regulate the development of minerals. The question is where you draw the line between these two competing arguments.

A. OKLAHOMA CASES

There are a couple of Oklahoma cases which do not directly address the issue, but which nevertheless uphold the proposition that surface rights appurtenant to a force-pooled interest are no different than surface rights pursuant to an oil and gas lease. In *Cormack v. Wil-Mc Corporation*, 661 P.2d 525 (Okla. 1983), a force-pooled mineral owner who also owned the surface sought surface damages. The court there squarely held that the surface owner was constitutionally entitled to recover damages. Interestingly, the court specifically held that the usual common law rules concerning use of the surface do not apply to a force-pooled interest. Rather, even if the use of the surface is reasonable, as to a force-pooled owner the force-pooling is an act of the state, and the owner is therefore entitled to compensation for the property right that is taken. In its decision, the court noted that the Surface Damages Act was passed while the appeal

was pending, and *in dicta* suggested that the Surface Damages Act would require the same result. In any event, at the surface owner's request, the court clearly held that the surface owner was entitled to compensation. What the court did not address, however, is the question of whether or not the Commission can, in effect, force-pool a surface interest. Since the surface owner was not asserting that the Commission had no constitutional authority to force-pool a surface interest, but was instead only asking for compensation, the court never addressed the fundamental issue.

In *McDaniel v. Moyer*, 662 P.2d 309 (Okla. 1983), an operator sought an injunction to prevent a force-pooled owner from interfering with surface activities. The force-pooled owner owned both surface and minerals. The force-pooled owner argued that while the Commission might have authority to force-pool a mineral interest, it had no authority to force-pool a surface interest. Unfortunately, the surface owner did not clearly raise the constitutional issue, but instead sought only a review of the wisdom of the Commission's decision. The court ruled that it had no authority to review or reconsider the wisdom of the Commission's decision. According to the court, if the Commission had jurisdiction to issue the order (a pooling order, in this case), then the inquiry was at an end. The courts had no power to second-guess the Commission. The end result is that because of the way the surface owner framed the issue, the substantive constitutional issue was never raised.

The court also addressed in a footnote the question of compensation. Although the court ruled that the question of compensation was not presented by the case and therefore declined to address the issue as a part of its holding, it did note the earlier decision in *Cormack v. Will-Mc*, and suggested that the decision in *Cormack* was a good

one. By implication, the court therefore suggested that it saw nothing wrong with the proposition that the Commission can, in effect, force-pool a surface interest, provided that the surface owner is compensated for the surface rights which are taken.

One other Oklahoma case has some relevance to this issue. In *Texas Oil and Gas Corp. v. Rein*, 534 P.2d 1277, TXO integrated a party who owned both surface and minerals. The integrated interest happened to be TXO's proposed well site. The integrated owner objected, asserting that the Commission could not force him to allow TXO to put a well on his land. The Oklahoma Supreme Court rejected the argument, and permitted TXO to drill a well on the surface of lands owned by a force-pooled owner. Although the case clearly reaches the conclusion that pooling and spacing orders have the net effect of giving the operator unit-wide surface rights, the constitutional argument was not raised or addressed in the case. In addition, it did not involve a situation where the surface and minerals had been severed. Nevertheless, this case supports the proposition that Oklahoma considers surface rights appurtenant to force-pooled interests no different than surface rights appurtenant to a lease.

In my opinion, the fundamental constitutional issue has not yet been addressed in Oklahoma. It would appear, however, that if and when the issue is raised, the Oklahoma Supreme Court will hold that for purposes of surface operations, a force-pooled interest is to be treated no different than a leased interest, with one exception. In the case of a force-pooled interest, the surface owner must be compensated in accordance with the due process clause of the Constitution. In other words, to the extent the Surface Damages Act does not fully compensate the surface owner, the force-pooled surface owner is nevertheless entitled to the full value of the surface that is used or taken. For example, it

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would appear that if a pipeline is being built or if seismic operations are being conducted on the basis of a pooling order, the force-pooled surface owner is entitled to compensation, even for reasonable uses of the surface.

B. ARKANSAS CASES

There are no Arkansas cases addressing this issue. There is a marked difference of opinion on this topic. One group insists that force-pooling a surface interest would constitute an unconstitutional taking of property without due process of law. Another group contends that if integration itself is constitutional, then *ipso facto* integration of the surface rights is constitutional, since the right to use the surface is implicit in ownership of the mineral estate. How this issue would be resolved, if and when it is presented, is an open question. The fact that Arkansas has no surface damages act, however, in my opinion weighs strongly against a finding of constitutionality. The integration is clearly state action, and the use of the surface pursuant to an integration order is clearly a taking of property. I do not see how the state can take property by force and then insist that by virtue of the application of a common law rule, no compensation is owed. Of course, the Arkansas Supreme Court might very well adopt the rationale of the Oklahoma Supreme Court in *Cormack, supra*, and simply hold that it is legal, but you have to pay for it, with compensation to be decided in accordance with the due process clause.

C. DOES A COMMISSION ORDER TRUMP A “NO SURFACE USE” CLAUSE?

The foregoing discussion addresses a situation in which the parties are writing on a clean slate, i.e., there are no existing wells or leases, and the order pools/integrates an unleased mineral owner for a proposed well in a proposed unit. What happens if you already have a lease with a “no surface use” clause, and you end up in a situation where

you absolutely have to put your drill site on the lease? Can a pooling/integration order trump the express lease terms? I could find no cases addressing this issue. My gut reaction is that it is impossible – it would be unconstitutional on its face, as it would amount to *ex post facto* legislation. At the same time, however, the two Oklahoma cases mentioned above suggest that Oklahoma would see nothing wrong with this conclusion, provided only that the surface owner is paid fair value for the land taken.

VI. WHAT CONSTITUTES “UNREASONABLE” USE? HOW MUCH IS THE SURFACE OWNER ENTITLED TO RECOVER FOR “UNREASONABLE” USE?

For situations to which the Surface Damages Act does not apply in Oklahoma, and in all cases in Arkansas, if the surface owner can successfully prove that the operator’s use of the surface is “unreasonable,” the surface owner is entitled to recover damages from the operator. This raises a question that doesn’t have an easy answer – where do you cross the line from “reasonable” to “unreasonable”? The short answer to this question is that you cross the line whenever a jury of twelve reasonable people says you have crossed the line. In my experience, a jury of twelve reasonable people living in the same community as the surface owner always concludes that anything the operator does is unreasonable. The appellate decisions, however, make it clear that the things an operator absolutely has to do in order to drill and produce a well are “reasonable.” Items in this category would include an access road, a drill site, and a gathering line. Of course, this leaves open the question of where all of these items are located, and how much land has to be taken up for each one, all of which are fact issues which are normally decided by juries.

My conclusion is that unless you have a situation in which the proof is so clear-cut that you are certain the state supreme court will hold, as a matter of law, that your surface use was reasonable, then your surface use is unreasonable. This is obviously not a very workable rule in the real world, but it is nevertheless the situation that exists.

In regard to the question of how much is owed, the answer is again whatever twelve reasonable people decide is fair. Theoretically, the usual rules of damage to real property are to be applied: If the damage is permanent the measure is the difference in value of the property before and after; if the damage is temporary, the measure is the cost to restore the property to its former condition, plus loss of use (rent). See, e.g., Ark. Western Gas Co. v. Foster, 254 Ark. 14, 491 S.W.2d 380 (1973); *Fox v. Nally*, 34 Ark. App. 94, 805 S.W.2d 661 (1991). The outer limit is certainly the fair market value of the land, and this typically ends up being the number that is litigated by the parties and awarded by juries. Again, this is not a very workable rule in the real world, but it is the reality of the situation.

VII. SURFACE ACCESS INSIDE AND OUTSIDE THE BOUNDARIES OF A UNIT

Once the Commission establishes unit boundaries, everyone in the industry recognizes that the operator has surface access rights unit-wide (setting aside for the moment the question of whether or not a pooling order/integration gives the operator surface rights as to force-pooled/integrated interests). Although as a practical matter this is almost certainly an accurate conclusion, it is not necessarily so.

Although I have found no cases addressing this topic, it seems to me that simply because an operator has a lease on the northeast quarter, another company has a lease in the southwest quarter, the Commission has entered an order creating a unit consisting of

the entire section, and the operator has been designated as operator, this does not necessarily mean that the operator has the right to go on the southwest quarter, on someone else's lease. Leases normally have a pooling clause, and joint operating agreements normally have language making it clear that all working interest owners commit their leases to unit operators. What if the lease or the JOA do not have such language, however? If the language isn't there, then I do not see how an operator would have surface rights on someone else's lease. As to Commission orders, the phrasing of the orders usually does not address this issue specifically. Instead, one would have to read into the order by implication the proposition that the creation of the unit and the designation of the operator carries with it the right to use the surface to develop the unit. Again, however, this is an assumption, not a substantive rule based on the literal phrasing of the order, a statute, or a case.

Having raised the issue, I will also say that as a practical matter I have never encountered this issue in twenty years of practicing law, and I have never heard of anyone raising it. Nevertheless, I suggest that it would be appropriate to again apply the first rule of surface access – read the lease, read the JOA, and read the order. If you have any question about whether the documents, considered as a whole, give the operator surface rights throughout the entire unit, then talk to a lawyer.

Outside of a unit, the answer to the question is much simpler. Unless you specifically have rights outside the boundaries of the unit pursuant to the express terms of a lease, you have no rights. Indeed, even if you have a lease from Farmer Brown for his land in Section 1 and a lease from Farmer Brown for his land in Section 2, you cannot use the authority of the Section 2 lease to construct an access road across Section 2 for

the purpose of developing Section 1, and vice versa. If you can't get your access road or pipeline across Section 2 pursuant to a consensual agreement with Farmer Brown, you don't get an access road or a pipeline. See, e.g., *Williams & Meyers*, Section 218.1-218.4.

One aspect of this issue that I think merits consideration is the proposition that if the Commission can give an operator surface rights by virtue of a pooling/integration order, does the Commission also have the authority to give an operator surface rights outside a unit, for the purpose of developing the unit? To my knowledge, no one has ever tried it, but in theory if you can do one, you should be able to do the other. This obviously doesn't sound right, and my view is that it probably isn't right. Indeed, I believe this proposition illustrates the problem with the idea that the Commission, as an arm of the state, can enter an order requiring that a surface owner give up his surface rights. I am not at all sure that the state has the constitutional authority to take such action. If the state does, however, then it seems to me that the constitutional authority would apply wherever necessary to develop the resource, whether it is inside or outside a unit.

One final point. Both Arkansas and Oklahoma recognize the authority of the Commission to establish field-wide units. If the lease has a standard pooling clause which is limited to a maximum area of 640 acres, can the Commission adopt an order which establishes a field-wide unit of several square miles, and that thereby give the operator surface rights throughout the field-wide unit? Again, this is a situation in which I have been unable to find any case law addressing the issue, one way or the other. That having been said, however, my previous comments apply with equal force to this

proposition. If the Commission has constitutional authority to take reasonable steps to secure the efficient development of the resource, then it would seem that it has constitutional authority to give operators the necessary surface rights to accomplish that objective. As I have already stated, however, I question how the state can take such action without at least providing a mechanism to ensure that the person whose property is being taken (the surface owner) is fairly compensated.

VIII. FRACTIONAL MINERAL INTERESTS

The law on this point is well settled. As long as you have a lease from a fractional mineral owner, you have the right to use the surface to develop the mineral estate. You do not have to lease 100% of the mineral owners in order to secure surface rights. *Enron Oil & Gas Company v. Worth*, 947 P.2d 610 (Okla. 1997); *Mullins v. Ward*, 712 P.2d 55 (Okla. 1985).

IX. SEISMIC OPERATIONS

Seismic operations are part of the exploration and development of the mineral estate, and the usual rules concerning the dominance of the mineral estate, and the right to make “reasonable” use of the surface estate for this purpose, therefore apply to seismic operations. See, e.g., *Enron Oil & Gas Company v. Worth*, *supra*; *Williams & Meyers*, § 218.5. Note, in this regard, that seismic operations are not included within the scope of Oklahoma’s Surface Damages Act. *Anschutz*, *supra*. The end result is that as long as the surface use associated with seismic operations is “reasonable,” the surface owner is not entitled to any compensation and cannot prohibit the operator from gaining access to his property for the purpose of conducting the seismic operations. Of course, if the operator acts unreasonably, such as by tearing down a fence and not repairing it, drying up a well

with the vibration from the shot, etc., the surface owner is entitled to compensation for any damages the surface owner may establish he suffered. See, e.g., *Western Geophysical Co. v. Mason*, 240 Ark. 767, 402 S.W.2d 657 (1966).

Because seismic operations are part of the development of the mineral estate, under the common law rules the surface owner's permission would not be not required. Both Arkansas and Oklahoma, however, have adopted extensive statutes and regulations concerning the method and manner by which seismic operations are conducted, such as giving notice to the surface owner, posting a bond to secure damages, etc. Interestingly, the Arkansas rule says on its face that the seismic operation can only be conducted after securing the permission of the surface owner.

"No entry shall be made by the permittee upon the lands upon which such seismic operations are to be conducted without the permittee having first secured a permit from the landowner authorizing such operations to be conducted." AOGC Rule B-42.

"Applicant further agrees that it shall neither enter nor permit the entry upon any lands for the purpose of conducting such seismic operations without having first secured a valid permit from the owner or owners thereof granting Applicant herein the right of entry." AOGC Form 19.

The Commission is in the process of amending this rule to only require notice to the surface owners.

One other issue that occurred to me in the course of preparing this paper is the question of the effect of a pooling order on the right to conduct seismic operations. For example, assume that a mineral owner has been force-pooled/integrated by order of the Commission. May the party who force-pooled/integrated that interest assert the Commission order as a valid basis for conducting seismic operations? My answer is "I don't know," and I found no cases addressing the topic. Again, however, for the reasons

previously stated, I question how the Commission, as a subdivision of the State, can compel the surface owner to give up his property rights without due process of law, and particularly without being compensated for the property rights taken.

X. WHAT HAPPENS IF THE LANDOWNER REFUSES TO COOPERATE?

Everyone involved in the oil and gas business has at one time or another encountered a landowner who has absolutely no legal right to stop you, but nevertheless makes it clear that if you set foot on his property, you will be shot. What do you do in this circumstance? The short answer is that you have only one option – go to court and get an injunction. Even though you have the legal right to use the surface, this does not give you permission to cause personal injury to the landowner. You could always try calling the appropriate law enforcement office, and asking for their help, but in my experience they are unwilling to do anything without a court order.

Getting a court order, and getting it enforced, is sometimes easy and sometimes hard. I have had good luck getting judges to give me an expedited hearing, or even entering an *ex parte* order, and I have had good luck getting sheriffs to enforce the orders. Nevertheless, you are at the mercy of the judge and the sheriff in terms of how quickly you can get the order entered and enforced. Unfortunately, this circumstance is something that is outside your control, and there is nothing you can do about it. If the judge and/or the sheriff won't cooperate, it's going to take some time to get on the property. Of course, you would always be entitled to recover damages from the surface owner, but if you have missed a spud date in the meantime and the surface owner is a turnip, it doesn't do you any good.

XI. CONCLUSION

As was noted at the beginning of this paper, surface access issues start off seeming very simple, and end up being complex. Although the mineral owner will undoubtedly prevail in the long run, the practical problems in getting from point A to point B may make the victory a pyrrhic one. After all, although the lawyers like it, it doesn't make a lot of sense to spend two years and \$25,000.00 in legal fees arguing over a surface damage claim that could have been settled for \$3,000.00.

In the real world, my advice to clients (aside from the first rule of surface access) is to proceed on the assumption that the surface owner is absolutely entitled to fair compensation for the surface of his land, and to deal with the surface owner accordingly. This undoubtedly will require spending more money than the letter of the law requires, but as a practical matter I believe oil and gas operators get value for every penny they spend maintaining relations with surface owners.

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52 Okl. St. § 318.3

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52 Okl. St. § 318.3 (2003)

§ 318.3. Notice of intent to drill--Negotiating surface damages

Before entering upon a site for oil or gas drilling, except in instances where there are non-state resident surface owners, non-state resident surface tenants, unknown heirs, imperfect titles, surface owners, or surface tenants whose whereabouts cannot be ascertained with reasonable diligence, the operator shall give to the surface owner a written notice of his intent to drill containing a designation of the proposed location and the approximate date that the operator proposes to commence drilling.

Such notice shall be given in writing by certified mail to the surface owner. If the operator makes an affidavit that he has conducted a search with reasonable diligence and the whereabouts of the surface owner cannot be ascertained or such notice cannot be delivered, then constructive notice of the intent to drill may be given in the same manner as provided for the notice of proceedings to appoint appraisers.

Within five (5) days of the date of delivery or service of the notice of intent to drill, it shall be the duty of the operator and the surface owner to enter into good faith negotiations to determine the surface damages.

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52 Okl. St. § 318.4

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52 Okl. St. § 318.4 (2003)

§ 318.4. Undertakings which may be posted as damage deposit

A. Every operator doing business in this state shall file a corporate surety bond, letter of credit from a banking institution, cash, or a certificate of deposit with the Secretary of State in the sum of Twenty-five Thousand Dollars (\$ 25,000.00) conditioned upon compliance with Sections 318.2 through 318.9 of this title for payment of any location damages due which the operator cannot otherwise pay. The Secretary of State shall hold such corporate surety bond, letter of credit from a banking institution, cash or certificate of deposit for the benefit of the surface owners of this state and shall ensure that such security is in a form readily payable to a surface owner awarded damages in an action brought pursuant to this act. Each corporate surety bond, letter of credit, cash, or certificate of deposit filed with the Secretary of State shall be accompanied by a filing fee of Ten Dollars (\$ 10.00).

B. The bonding company or banking institution shall file, for such fee as is provided for by law, a certificate that said bond or letter of credit is in effect or has been canceled, or that a claim has been made against it in the office of the court clerk in each county in which the operator is drilling or planning to drill. Said bond or letter of credit must remain in full force and effect as long as the operator continues drilling operations in this state. Each such filing shall be accompanied by a filing fee of Ten Dollars (\$ 10.00).

C. Upon deposit of the bond, letter of credit, cash, or certificate of deposit, the operator shall be permitted entry upon the property and shall be permitted to commence drilling of a well in accordance with the terms and conditions of any lease or other existing contractual or lawful right.

D. If the damages agreed to by the parties or awarded by the court are greater than the bond, letter of credit, cash, or certificate of deposit posted, the operator shall pay the damages immediately or post an additional bond, letter of credit, cash, or certificate of deposit sufficient to cover the damages. Said increase in bond, letter of credit, cash, or certificate of deposit shall comply with the requirements of this section.

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52 Okl. St. § 318.5

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52 Okl. St. § 318.5 (2003)

§ 318.5. Negotiating surface damages--Appraisers--Report and exceptions thereto--Jury trial

A. Prior to entering the site with heavy equipment, the operator shall negotiate with the surface owner for the payment of any damages which may be caused by the drilling operation. If the parties agree, and a written contract is signed, the operator may enter the site to drill. If agreement is not reached, or if the operator is not able to contact all parties, the operator shall petition the district court in the county in which the drilling site is located for appointment of appraisers to make recommendations to the parties and to the court concerning the amount of damages, if any. Once the operator has petitioned for appointment of appraisers, the operator may enter the site to drill.

B. Ten (10) days' notice of the petition to appoint appraisers shall be given to the opposite party, either by personal service or by leaving a copy thereof at the party's usual place of residence with some family member over fifteen (15) years of age, or, in the case of nonresidents, unknown heirs or other persons whose whereabouts cannot be ascertained, by publication in one issue of a newspaper qualified to publish legal notices in said county, as provided in Section 106 of Title 25 of the Oklahoma Statutes, said ten-day period to begin with the first publication.

C. The operator shall select one appraiser, the surface owner shall select one appraiser, and the two selected appraisers shall select a third appraiser for appointment by the court, which such third appraiser shall be a state-certified general real estate appraiser and be in good standing with the Oklahoma Real Estate Appraisal Board. Unless for good cause shown, additional time is allowed by the district court, the three (3) appraisers shall be selected within twenty (20) days of service of the notice of the petition to appoint appraisers or within twenty (20) days of the first date of publication of the notice as specified in subsection B of this section. If either of the parties fails to appoint an appraiser or if the two appraisers cannot agree on the selection of the third appraiser within the required time period, the remaining required appraisers shall be selected by the district court upon application of either party of which at least one shall be a state-certified general real estate appraiser and be in good standing with the Oklahoma Real Estate Appraisal Board. Before entering upon their duties, such appraisers shall take and subscribe an oath, before a notary public or some other person authorized to administer oaths, that they will perform their duties faithfully and impartially to the best of their ability. They shall inspect the real property and consider the surface damages which the owner has sustained or will sustain by reason of entry upon the subject land and by reason of drilling or maintenance of oil or gas production on the subject

tract of land. The appraisers shall then file a written report within thirty (30) days of the date of their appointment with the clerk of the court. The report shall set forth the quantity, boundaries and value of the property entered on or to be utilized in said oil or gas drilling, and the amount of surface damages done or to be done to the property. The appraisers shall make a valuation and determine the amount of compensation to be paid by the operator to the surface owner and the manner in which the amount shall be paid. Said appraisers shall then make a report of their proceedings to the court. The compensation of the appraisers shall be fixed and determined by the court. The operator and the surface owner shall share equally in the payment of the appraisers' fees and court costs.

D. Within ten (10) days after the report of the appraisers is filed, the clerk of the court shall forward to each attorney of record, each party, and interested party of record, a copy of the report of the appraisers and a notice stating the time limits for filing an exception or a demand for jury trial as provided for in this section. The operator shall provide the clerk of the court with the names and last-known addresses of the parties to whom the notice and report shall be mailed, sufficient copies of the notice and report to be mailed, and pre-addressed, postage-paid envelopes.

1. This notice shall be on a form prepared by the Administrative Director of the Courts, approved by the Oklahoma Supreme Court, and supplied to all district court clerks.

2. If a party has been served by publication, the clerk shall forward a copy of the report of the appraisers and the notice of time limits for filing either an exception or a demand for jury trial to the last-known mailing address of each party, if any, and shall cause a copy of the notice of time limits to be published in one issue of a newspaper qualified to publish legal notices as provided in Section 106 of Title 25 of the Oklahoma Statutes.

3. After issuing the notice provided herein, the clerk shall endorse on the notice form filed in the case the date that a copy of the report and the notice form was forwarded to each attorney of record, each party, and each interested party of record, or the date the notice was published.

E. The time for filing an exception to the report or a demand for jury trial shall be calculated as commencing from the date the report of the appraisers is filed with the court. Upon failure of the clerk to give notice within the time prescribed, the court, upon application by any interested party, may extend the time for filing an exception to the report or filing a demand for trial by jury for a reasonable period of time not less than twenty (20) days from the date the application is heard by the court. Appraisers' fees and court costs may be the subject of an exception, may be included in an action by the petitioner, and may be set and allowed by the court.

F. The report of the appraisers may be reviewed by the court, upon written exceptions filed with the court by either party within thirty (30) days after the filing of the report. After the hearing the court shall enter the appropriate order either by confirmation, rejection, modification, or order of a new appraisal for good cause shown. Provided, that in the event a new appraisal is ordered, the operator shall have continuing right of entry subject to the continuance of the bond required herein. Either party may, within sixty (60) days after the filing of such report, file with the clerk a written demand for a trial by jury, in which case the amount of damages shall be assessed by a jury. The trial shall be conducted and judgment entered in the same manner as railroad condemnation actions tried in the court. A copy of the final judgment shall be forwarded to the county assessor in the county or counties in which the property is located. If the party demanding the jury trial does not recover a more favorable verdict than the assessment award of the appraisers, all court costs including reasonable attorney fees shall be assessed against the party.

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52 Okl. St. § 318.6

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52 Okl. St. § 318.6 (2003)

**§ 318.6. Appeal of decision on exceptions to report of appraiser or verdict upon jury trial--
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Any aggrieved party may appeal from the decision of the court on exceptions to the report of the appraisers or the verdict rendered upon jury trial. Such appeal shall not serve to delay the prosecution of the work on the premises in question if the award of the appraisers or jury has been deposited with the clerk for the use and benefit of the surface owner. In case of review or appeal, a certified copy of the final order or judgment shall be transmitted by the clerk to the appropriate county clerk to be filed and recorded.

When an estate is being probated, or when a minor or incompetent person has a legal guardian or conservator, the administrator or executor of the estate, or guardian of the minor or of the incompetent person or the conservator, shall have the authority to execute all instruments of conveyance provided for in this act on behalf of the estate, or minor or incompetent person with no other proceedings than approval by the judge of the court of jurisdiction being endorsed on the instrument of conveyance.

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52 Okl. St. § 318.7

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52 Okl. St. § 318.7 (2003)

§ 318.7. Effect of act on existing contractual rights and contracts to establish correlative rights--Indian lands

Nothing herein contained shall be construed to impair existing contractual rights nor shall it prohibit parties from contracting to establish correlative rights on the subject matter contained in this act.

This act shall not be applicable to nor affect in any way property held by an Indian whose interest is restricted against voluntary or involuntary alienation under the laws of the United States or property held by an Indian Tribe or by the United States for any Indian Tribe.

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52 Okl. St. § 318.9 (2003)

§ 318.9. Violation of act--Damages

Upon presentation of clear, cogent and convincing evidence that the operator willfully and knowingly entered upon the premises for the purpose of commencing the drilling of a well before giving notice of such entry or without the agreement of the surface owner, the court may, in a separate action, award treble damages. The issue of noncompliance shall be a fact question, determinable without jury, and a de novo issue in the event of appeal.

Any operator who willfully and knowingly fails to keep posted the required bond or who fails to notify the surface owner, prior to entering, or fails to come to an agreement and does not ask the court for appraisers, shall pay, at the direction of the court, treble damages to the surface owner.

Damages collected pursuant to this act shall not preclude the surface owner from collecting any additional damages caused by the operator at a subsequent date.

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roads, bridges, and highways of the county, in the discretion of the county court.

(b)(1) Any person, firm, or corporation violating §§ 15-72-208(b) and (c), 15-72-210, and 15-72-211 shall be subject to a penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) and a reasonable attorney's fee to be fixed by the court for the prosecuting attorney to be recovered in an action brought by the prosecuting attorney in the name of the state.

(2) The proceeds of penalties collected shall be turned into the general fund of the county where the leak is located, to be used on the roads, bridges, or highways of that county, in the discretion of the county court.

History. Acts 1917, No. 166, §§ 5, 7, p. Dig., §§ 9359, 9361; A.S.A. 1947, 890; C. & M. Dig., §§ 7303, 7305; Pope's §§ 53-205, 53-207.

15-72-203. Prerequisite to exploring or drilling — Notice to surface owner.

(a) Before entering upon a site for the purpose of exploration or for oil or gas drilling, except in instances where there are nonresident surface owners, nonresident surface tenants, unknown heirs, imperfect titles, surface owners or surface tenants whose whereabouts cannot be ascertained with reasonable diligence, the operator shall give to the surface owner written notice of his intent of exploration or undertaking drilling operations on premises owned by the surface owner. The notice shall contain the proposed location and the approximate date that the operator proposes to commence exploration or drilling operations.

(b) The notice shall be given in writing by certified United States mail, or personally, to the surface owner at the address of the surface owner as is reflected in the records of the tax collector of the county in which the lands are located.

History. Acts 1983, No. 902, § 2;
A.S.A. 1947, § 53-217.

15-72-204. Prerequisite for drilling permit — Operator's proof of financial responsibility.

(a) Every operator, as defined by this act, doing business in this state, shall file proof of financial responsibility with the Oil and Gas Commission before a permit to drill is issued by the Oil and Gas Commission for any drilling operation to be undertaken by the operator.

(b) Any person who acquires the right of an operator of any existing well or wells shall likewise be required to file proof of financial responsibility with the Oil and Gas Commission before a producer's certificate of compliance and authorization to transport oil or gas therefrom is issued.

commission which the property seized and sold may bring, after payment of court costs, shall be paid over to the owner of the well.

History. Acts 1939, No. 105, § 26;
A.S.A. 1947, § 53-126.

15-72-213. Surface owner's lien for damages caused by operator neglect.

Any surface owner who is damaged or threatened with damage by the neglect of the operator will have a lien upon the fixtures or equipment owned by the operator, with all oil, gas, and other hydrocarbons produced therefrom which may be run to the credit of the operator to secure payment for all damages that can be lawfully recovered under the terms of the oil and gas lease or leases covering the particular property and under which drilling operations are being undertaken by the operator. The lien shall also secure payment for any other damages that the surface owner would be entitled to recover from the operator under the laws of the State of Arkansas.

History. Acts 1983, No. 902, § 4;
A.S.A. 1947, § 53-219.

RESEARCH REFERENCES

Ark. L. Rev. Case Notes, Implied Covenant to Restore Surface, Etc., 41 Ark. L. Rev. 173.

15-72-214. Surface owner's claim for damages caused by operator neglect.

(a) Each operator shall remain liable under the proof of financial responsibility as filed with the Oil and Gas Commission until released by the Director of Production and Conservation.

(b) Any surface owner seeking to recover thereunder for damages caused by the neglect of the operator must file written notice of claim therefor with the Oil and Gas Commission within one (1) year of the date of issuance of the permit for such drilling operations. However, that claim shall be subordinate to the rights of the Oil and Gas Commission under the proof of financial responsibility to secure compliance by the operator with the provisions of §§ 15-71-101 — 15-71-112, 15-72-101 — 15-72-110, 15-72-205, 15-72-212, 15-72-216, 15-72-301 — 15-72-324, and 15-72-401 — 15-72-407, as amended, and the rules and regulations of the commission promulgated thereunder.

History. Acts 1985, No. 559, § 1;
A.S.A. 1947, § 53-220.

Source: [Legal](#) > [States Legal - U.S.](#) > [Oklahoma](#) > [Statutes & Legislative Materials](#) > [OK - Oklahoma Statutes](#) ⓘ

TOC: [Oklahoma Statutes](#) > [/.../](#) > [SEISMIC EXPLORATION REGULATION ACT](#) > [§ 318.21. Short title](#)

52 Okl. St. § 318.21

OKLAHOMA STATUTES

*** CURRENT THROUGH THE 2003 SUPPLEMENT, 2002 SECOND REGULAR SESSION ***

TITLE 52. OIL AND GAS
CHAPTER 4. WELL REGULATION
SEISMIC EXPLORATION REGULATION ACT

♦ [GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION](#)

52 Okl. St. § 318.21 (2003)

§ 318.21. Short title

This act shall be known and may be cited as the "Seismic Exploration Regulation Act". For purposes of this act only, "seismic exploration" means the drilling of seismograph test holes and use of surface energy sources such as weight drop equipment, thumpers, hydropulses or vibrators.

Source: [Legal](#) > [States Legal - U.S.](#) > [Oklahoma](#) > [Statutes & Legislative Materials](#) > [OK - Oklahoma Statutes](#) ⓘ

TOC: [Oklahoma Statutes](#) > [/.../](#) > [SEISMIC EXPLORATION REGULATION ACT](#) > [§ 318.21. Short title](#)

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Source: [Legal > States Legal - U.S. > Oklahoma > Statutes & Legislative Materials > OK - Oklahoma Statutes](#) 

TOC: [Oklahoma Statutes > /.../ > SEISMIC EXPLORATION REGULATION ACT > § 318.22. Seismic exploration operations--Registration--Permits--Requirements--Penalty](#)

52 Okl. St. § 318.22

OKLAHOMA STATUTES

*** CURRENT THROUGH THE 2003 SUPPLEMENT, 2002 SECOND REGULAR SESSION ***

TITLE 52. OIL AND GAS
CHAPTER 4. WELL REGULATION
SEISMIC EXPLORATION REGULATION ACT

♦ **GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION**

52 Okl. St. § 318.22 (2003)

§ 318.22. Seismic exploration operations--Registration--Permits--Requirements--Penalty

A. The Corporation Commission is hereby directed and authorized to promulgate rules governing the operations of seismographic exploration for the purpose of protecting the interests and property of the citizens of this state.

B. Any person, firm, corporation or entity desiring to commence any seismographic exploration in this state shall, prior to any such activity, be duly registered with the Corporation Commission and shall be required to apply for a permit for each separate seismic exploration.

C. Rules promulgated by the Commission governing all seismic exploration operations shall include, but not be limited to, requirements for:

1. Applicants to post a form of financial surety guarantee, the form and amount to be determined by the Commission which shall remain in effect until release is authorized by the Commission;

2. Applicants to notify all surface owners of property where seismic exploration will occur at least fifteen (15) days prior to commencement of seismic exploration. If the applicant has obtained specific written permission and has given actual notice of intent to conduct seismic exploration any time before fifteen (15) days prior to conducting seismic exploration, such action shall be considered sufficient notification for the purposes of this section. Notification by U.S. mail shall be sufficient for the purposes of this section, provided the notice is postmarked at least fifteen (15) days prior to commencement of any seismic exploration; and

3. Applicants to be permitted for each seismic exploration operation.

D. The notice required in subsection C of this section shall be sent by U.S. mail, include a copy of the oil or gas lease or seismic permit authorizing the use of the surface for seismic exploration and contain the following information:

1. Name of the company conducting seismic exploration;
2. Anticipated date of seismic exploration; and

3. Any other pertinent information the Commission deems appropriate and relevant for the protection of surface owners.

E. The Commission is further directed to promulgate rules to implement a system to register complaints against any person, firm or corporation conducting seismic exploration. The Commission may determine if and when a complaint has been adequately resolved.

F. Any person, firm, corporation or entity which conducts any seismic exploration without a permit by the Commission, or in any other manner violates the rules of the Commission governing such exploration shall be subject to a penalty of One Thousand Dollars (\$ 1,000.00) per violation per day by the Commission, in addition to any other legal remedy provided by law.

Source: [Legal](#) > [States Legal - U.S.](#) > [Oklahoma](#) > [Statutes & Legislative Materials](#) > [OK - Oklahoma Statutes](#) ⓘ

TOC: [Oklahoma Statutes](#) > [/.../](#) > [SEISMIC EXPLORATION REGULATION ACT](#) > [§ 318.22. Seismic exploration operations--Registration--Permits--Requirements--Penalty](#)

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TOC: [Oklahoma Statutes](#) > [/.../](#) > [SEISMIC EXPLORATION REGULATION ACT](#) > [§ 318.23. Seismic test hole blasting within certain distance of habitable dwelling, building or water well](#)

52 Okl. St. § 318.23

OKLAHOMA STATUTES

*** CURRENT THROUGH THE 2003 SUPPLEMENT, 2002 SECOND REGULAR SESSION ***

TITLE 52. OIL AND GAS CHAPTER 4. WELL REGULATION SEISMIC EXPLORATION REGULATION ACT

◆ [GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION](#)

52 Okl. St. § 318.23 (2003)

§ 318.23. Seismic test hole blasting within certain distance of habitable dwelling, building or water well

It shall be unlawful for any person, firm, corporation or entity to conduct any seismic test hole blasting within two hundred (200) feet of any habitable dwelling, building or water well without written permission from the owner of the property.

Source: [Legal](#) > [States Legal - U.S.](#) > [Oklahoma](#) > [Statutes & Legislative Materials](#) > [OK - Oklahoma Statutes](#) ⓘ

TOC: [Oklahoma Statutes](#) > [/.../](#) > [SEISMIC EXPLORATION REGULATION ACT](#) > [§ 318.23. Seismic test hole blasting within certain distance of habitable dwelling, building or water well](#)

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Source: [Legal > States Legal - U.S. > Oklahoma > Administrative Materials & Regulations > OK - Oklahoma Administrative Code](#) ①

TOC: [Oklahoma Administrative Code > /.../ > PART 3. STORAGE AND DISPOSAL OF FLUIDS > 165:10-7-31. Seismic and stratigraphic operations](#)

O.A.C. § 165:10-7-31

Oklahoma Administrative Code
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*** THIS DOCUMENT IS CURRENT THROUGH AUGUST 15, 2000 ***

TITLE 165. CORPORATION COMMISSION
CHAPTER 10. OIL AND GAS CONSERVATION
SUBCHAPTER 7. POLLUTION ABATEMENT
PART 3. STORAGE AND DISPOSAL OF FLUIDS

O.A.C. § 165:10-7-31 (2000)

165:10-7-31. Seismic and stratigraphic operations

(1) **Scope.** This Section shall cover the permitting, bonding, and plugging requirements for seismic exploration activities and stratigraphic test holes. Check-shots and vertical seismic profiles or other downhole wellbore seismic operations are excluded from this Section.

(2) For the purposes of this Section, seismic. operation shall mean the drilling of seismic shot holes and use of surface energy sources such as weight drop equipment, thumpers, hydro pulses and vibrators. This definition does not include surveying of the seismic area or the activity of conducting private negotiations between parties.

(3) For the purposes of this Section, technical information and data shall be defined as pre-plats as referenced in (b) (2) (B) and post-plats as referenced in subsection(e).

(1) **Seismic and stratigraphic test permitting.** Before commencing any seismic or stratigraphic test hole operations in the State of Oklahoma, those companies who actually do the work in the field, hereinafter referred to as the applicant, shall:

(A) Be duly registered with the Commission, including provision of a permanent address.

(B) Post a financial surety guarantee with the Commission.

(C) Provide to the Commission the name and business or field address of the contractor responsible for the operations being conducted.

(D) Notify all surface owners of property where seismic or stratigraphic test operations will occur at least fifteen (15) days prior to commencement of operations. It shall be sufficient notice pursuant to this Section when notice is given to the current surface owner(s) as shown by the records of the applicable county treasurer's office. If the applicant has obtained from the surface owner specific written permission to conduct such operations prior to commencement of operations, such action shall be considered sufficient notification for the purposes of this Section and the 15 day notice requirement shall not be required. Notification by U.S. mail shall be sufficient for the purposes of this Section, provided the notice is postmarked at least fifteen (15) days prior to commencement of any seismic or stratigraphic test operations.

(E) The notice shall include a copy of the oil or gas lease or seismic permit or other legal instrument of similar nature authorizing the use of the surface for seismic or stratigraphic

test hole operation(s) and shall contain the following information:

(i) Name of the company for whom the applicant is conducting the seismic or stratigraphic test operation(s) and

(ii) Anticipated date of commencement of operation(s).

(F) Applicants must obtain a permit from the Conservation Division for each seismic or stratigraphic test operation.

(2) The applicant shall make application on the Commission's Form 1000S.

(A) The permit shall be valid for only one operation as approved on Form 1000S.

(B) A pre-plat of the operation area shall be attached to the application showing the location of the operation area delineated to the nearest section.

(C) Post a performance bond in the amount of \$50,000, or other form of surety in an amount as approved by the Conservation Division. The performance bond may be filed for each operation, or may be filed on an annual basis to cover all operations that may be undertaken during the year. If the performance bond is filed for a single operation, the amount may be approved by the Conservation Division for less than \$50,000 or in another form of financial surety guarantee, depending on the nature of the seismic or stratigraphic operation involved, the number of shot holes or surface energy source points, the cost of the operation and the size of the applicant's business. The form of surety shall not include letters of credit or financial statements. Such bond(s) or other surety may be released upon request made no sooner than thirty (30) days subsequent to the completion of the applicant's operation(s), which have been permitted under such bond(s) or other surety, upon satisfactory inspection or review by Conservation Division personnel.

(D) The permit shall expire twelve (12) months from the issue date, unless operations are commenced.

(E) The Conservation Division shall approve or deny the application within thirty (30) days of receipt of the application. The Conservation Division may act upon an application or amended application on an expedited basis.

(F) During any activity subject to this subsection, the applicant shall maintain at the site a copy of the approved permit, Form 1000S, for inspection.

(G) All technical information, excluding the Form 1000S, but including any plats, relative to the permitted operation shall remain confidential or the Conservation Division shall destroy the records. The plats and any other technical data submitted, shall be filed in the Technical Services Department of the Conservation Division. Upon request of the Manager of Field Operations, the technical data may be reviewed by Field Operations to ensure compliance with Commission rules.

(3) Unless the applicant can demonstrate to the Conservation Division's District Office that another method will provide sufficient protection to groundwater supplies and long term land stability, the following guidelines shall be observed:

(A) Standard plugging method. All holes shall be filled to within four feet from the surface with bentonite, native cuttings, or an appropriate substitute. The remainder of the shot hole shall be filled and tamped with native cuttings or soil.

(B) Special methods. In areas where the standard plugging method has been shown to be inadequate for the prevention of groundwater contamination, the Conservation Division may

designate the area as a special problem area. In such event, the Conservation Division will provide to the best of its ability, a clear geographical description of such area and the recommended, or required, hole plugging methods. Should the applicant encounter conditions such that the standard method appears inadequate for the prevention of groundwater contamination, the applicant shall inform the Conservation Division.

(i) Artesian flow. If the standard method is inadequate to stop artesian flow, alternate remedies must be employed to do so.

(ii) Water well conversion. Applicants are prohibited from allowing the conversion of seismic shot holes or stratigraphic test holes to water wells.

(iii) Groundwater protection. Alternative plugging procedures and materials may be utilized when the applicant has demonstrated to the Conservation Division's satisfaction that the alternatives will protect usable quality water.

(iv) Timeliness. All seismic shot holes or stratigraphic test holes shall be plugged as soon as possible and shall not remain unplugged for a period of more than 30 days after the drilling of the hole.

(c) No seismic shot hole blasting shall be conducted within two hundred (200) feet of any habitable dwelling, building, or water well without written permission from the owner of the property or within 500 feet of any superfund site or hazardous waste facility.

(d) Any person, firm, corporation or entity which conducts any seismic or stratigraphic test hole operations without a permit as provided in this Section, or in any other manner violates the rules of the Commission governing such operation shall be subject to a penalty up to One Thousand Dollars (\$1,000.00) per violation per day after completion of the informal complaints procedure provided in OAC 165:10-7-7 and notice and hearing pursuant to the Commission's contempt proceedings.

(e) Within 30 days after completing a seismic or stratigraphic test hole operation, the applicant receiving the permit shall submit a copy of the approved Form 1000S certifying the plugging of all seismic shot holes or stratigraphic test holes in compliance with Section (b)(3) (A) or Section (b)(3)(B) above. In addition to the Form 1000S, a post-plat or acceptable form of survey showing the actual location of all seismic shot holes or all stratigraphic test holes shall be included.

(f) **Complaints.** A complaint alleging violations of this Section may be filed with the Commission against any person, firm or corporation conducting seismic and stratigraphic operation(s). The Commission may determine if and when a complaint has been adequately resolved, pursuant to the informal complaints process of OAC 165:10-7-7, and, if an environmental complaint, pursuant to the citizen complaint procedure of OAC 165:5-1-25.

CHAPTER AUTHORITY: 17 O.S., §§ 52 through 57 and 500 through 525; 27A O.S., §§ 1-1-201 through 1-3-101; 29 O. S., §§ 7-401 and 7-401a; 52 O.S., §§ 86.2 through 320, 471 through 477, and 528 through 614; 68 O.S., § 1001; 82 O.S., §1085.30.

SOURCE: Added at 16 Ok Reg 842, eff 1-5-99 (emergency); Added at 16 Ok Reg 2190, eff 7-1-99.

CHAPTER SOURCE: Codified 12-31-91.

Source: [Legal](#) > [States Legal - U.S.](#) > [Oklahoma](#) > [Administrative Materials & Regulations](#) > **OK - Oklahoma Administrative Code** ①

TOC: [Oklahoma Administrative Code](#) > [/.../](#) > [PART 3. STORAGE AND DISPOSAL OF FLUIDS](#) > **165:10-7-31. Seismic and stratigraphic operations**

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matter regarding which he may be lawfully interrogated, any circuit court in this state, on application of the commission, may in term time or vacation issue an attachment for the person and compel him to comply with the subpoena and to attend before the commission and produce the documents, and give his testimony upon such matters, as may be lawfully required. The court shall have the power to punish for contempt as in case of disobedience of like subpoena issued by or from the court, or for a refusal to testify therein.

History. Acts 1939, No. 105, § 13;
A.S.A. 1947, § 53-113.

15-71-113. Authority to acquire and maintain unmarked cars.

(a) In order to enable the Oil and Gas Commission to carry out its duties in the most effective and efficient manner, the commission is authorized to acquire and maintain for use by field personnel full-sized sedan automobiles equipped with V-8 engines in the 350 cubic inch displacement range, limited slip differentials, and vinyl seat covers.

(b) Since marked cars sometimes prove a hindrance to the commission in carrying out its inspection, investigation, and enforcement responsibilities, the commission is exempted from any and all laws and administrative regulations regarding special registration tags and special decals for state-owned vehicles.

History. Acts 1981, No. 319, § 6;
A.S.A. 1947, § 53-138.

15-71-114. Permit required for field seismic operations.

(a)(1) Any person or entity desiring to perform field seismic operations in the state shall make application to the Oil and Gas Commission for a permit to do so.

(2)(A) The application for a permit shall be made on forms prescribed by the commission.

(B) The application shall include the name and principal business address of the applicant, the location in the state where the applicant plans to conduct field seismic activities, a designated agent for service of process in Arkansas, and such other information as may be prescribed by regulation of the commission.

(3)(A) The application shall be accompanied by a bond in the amount of fifty thousand dollars (\$50,000) or such larger amount as may be prescribed by the commission not to exceed two hundred fifty thousand dollars (\$250,000).

(B) The bond shall be executed by the applicant, as principal, and a corporate surety approved by the commission, and shall be conditioned that the permittee shall pay all damages resulting from such seismic operations.

(C) The bond shall be maintained at an amount not less than fifty thousand dollars (\$50,000) nor more than two hundred fifty thou-

sand dollars (\$250,000) as may be set by the commission, so long as the permittee is conducting field seismic operations in the state and until released by the commission.

(D) Any surface owner seeking to recover under such bond for damages caused by the performance of such field seismic operations must file written notice of claim therefor with the Oil and Gas Commission within one (1) year of the date of expiration of the permit for conducting such operations; provided, however, that such claim shall be subordinate to the rights of the Oil and Gas Commission under said bond to secure compliance by said permittee with the provisions of this section, as hereby amended, and the rules and regulations of the commission promulgated thereunder.

(b) The Oil and Gas Commission shall have authority to make such reasonable rules, regulations, and orders as necessary from time to time for the proper administration and enforcement of this section and to require the payment of a registration fee of two hundred fifty dollars (\$250) or such sum as the commission may prescribe for each application for registration filed hereunder; provided, that in no event shall the fee exceed five hundred dollars (\$500).

(c) It is unlawful for any person or entity to perform any field seismic operations in the state unless such person or entity first obtains a permit to do so as provided for in this section.

(d)(1) Any person who conducts any field seismic operation in the state without having obtained a permit hereunder or without having fully complied with the provisions of this section or any rules and regulations adopted by the commission pursuant to this section shall be subject to a fine of one thousand dollars (\$1,000) for each day such operation continues.

(2) Any person who, for the purpose of evading this section or any rule, regulation, or order made hereunder, shall intentionally make or cause to be made any false entry or statement of fact in any application report required to be made by this section or by any rule, regulation, or order made hereunder; or who, for such purpose, shall omit to make, or cause to be omitted, any entry, statement of fact, or report required to be made by this section or any rule, regulation, or order made hereunder; or who, for such purpose, shall move out of the jurisdiction of the state, shall be deemed guilty of a misdemeanor and shall be subject to a fine of not more than five thousand dollars (\$5,000) or imprisonment for a term of not more than six (6) months, or to both such fine and imprisonment.

History. Acts 1991, No. 5, §§ 1-3; 1993, No. 342, § 1.

Amendments. The 1993 amendment added (a)(3)(D).

GENERAL RULES AND REGULATIONS

1. Hazards and characteristics of Hydrogen Sulfide (H₂S).
2. Operations of safety equipment and life support systems.
3. First aid in the event of an employee exposure.
4. Use and operation of Hydrogen Sulfide (H₂S) monitoring equipment.
5. Emergency response procedures to include corrective actions, shutdown procedures, evacuation routes and rescue methods.

RULE B-42 - SEISMIC RULES AND REGULATIONS

Any person or entity desiring to perform field seismic operations within the State of Arkansas shall make application on AOGC Form 19, to the Oil and Gas Commission for a permit to do so. Each application as filed shall be accompanied by a registration fee of Two Hundred Fifty and No/100 Dollars (\$250.00) or such sum as the Commission may prescribe therefore not exceeding the sum of Five Hundred and No/100 Dollars (\$500.00) together with a bond wherein said applicant is principal and a corporate surety approved by the Commission authorized to do business in the State of Arkansas for the use and benefit of the Arkansas Oil and Gas Commission in the penal sum of Fifty Thousand and No/100 Dollars (\$50,000.00) (or such larger amount as may be prescribed by the Commission not to exceed Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00)) on AOGC Form 19B, conditioned that said principal shall comply with Acts 1991, No. 5, (Ark. Code Ann. (1987) § 15-71-114) as by law required and the orders, rules, and regulations of said Commission as promulgated thereunder. As used herein, "field seismic operations" is inclusive of but not limited to the preliminary line survey, the acquisition of necessary permits, the selection and marking of shot-hole locations, necessary clearing of vegetation, shot-hole drilling, implantation of charge, detonation and backfill of shot-hole as required under General Rule B-10.

The person or entity proposing to conduct such seismic operations shall file an application (AOGC Form 19) accompanied by the information and drawings to be submitted therewith together with such additional information, if any, as the Commission may require to identify the area within which such operations are proposed to be conducted and the course and route thereof. Any substantial variations or departures therefrom shall be promptly reported to the Commission by the filing of amended or supplemental drawings reflecting the same. No entry shall be made by the permittee upon the lands upon which such seismic operations are to be conducted without the permittee having first secured a permit from the landowner authorizing such operations to be conducted. The consideration paid and to be paid for each such permit shall be paid to the person or persons entitled thereto concurrently with the execution and delivery of such seismic permit. All vehicles utilized by the prime seismic contractor or its agents shall be clearly identified by signs or markings readily legible during daylight hours from a distance of fifty feet (50') while the vehicle is stationary indicating the name of such contractor.

Any person or entity desiring to perform field seismic operations within the State of Arkansas may accompany the application as filed for a permit to do so with a request, in writing, that said application with all information and drawings required to be submitted therewith be kept confidential for a period not to exceed twelve (12) months from the date of filing said application with said Commission, provided that said application and the information and drawings submitted therewith, when pertinent, may be introduced in evidence in any public hearing before the Commission or any court, regardless of the request that such be kept confidential.

No shot-hole shall be drilled nor charge detonated within two hundred feet (200') of any residence, water well or other structure without having first secured the express written authority of the owner and occupant thereof and the prime contractor shall be absolutely liable for the damages resulting therefrom.

GENERAL RULES AND REGULATIONS

Seismic permits will be required to be obtained from the owner or owners of lands lying within the scaled distance schedule as hereinafter set forth based upon a charge weight of seventy (70) FT/LB $\frac{1}{2}$:

<u>DISTANCE TO STRUCTURE (FT)</u>	<u>MAXIMUM ALLOWABLE CHARGE WEIGHTS (LBS)</u>
50 (*)	0.5
100 (*)	2.0
150 (*)	4.5
200	8.0
250	12.0
300	18.0
350	25.0

(*) Requires special permit and authorization and imposes absolute liability on prime contractors for damages.

The maximum allowable charge weight (lbs.) is 25.0 unless the permittee requests and secures the prior written authorization from the Director of Production and Conservation of the Oil and Gas Commission regardless of the distance from the shot-hole to the structure.

All bonds required to be filed shall remain in effect so long as the permittee is conducting field seismic operations in the State of Arkansas and until such bond is released by the Commission upon evidence being provided that all damages resulting from such operations have been settled and released.

ARKANSAS OIL AND GAS COMMISSION

2215 West Hillsboro · P.O. Box 1472

El Dorado, Arkansas 71731-1472

APPLICATION FOR PERMIT TO CONDUCT SEISMIC OPERATIONS

(This Application must be accompanied by a \$250.00 application
fee and a Bond in form and amount as required by the Commission)

Date _____, 20 ____

Name of Applicant: _____

Send Permit to: Address _____

City _____

State _____ Zip _____ E-Mail _____

Phone _____ Fax _____

Indicate principal business address of Applicant if different than above:

Location of area within which Applicant proposes to conduct field seismic activities:

County or Counties: _____

Number of lines to be shot: _____

With respect to each such line indicate the Section. Township and Range of the proposed point of beginning and the projected termination
thereof for each line or lines which Applicant proposes to shoot and the general direction in which each such line shall be run:

(Each such seismic line should be separately described in the manner set forth above. Additional sheets may be attached
if necessary to describe the same. Applicant must attach an area plat or map depicting each such line for which this
Application is filed.)

Applicant's designated agent for service of process in the State of Arkansas is:

Proposed depth of shot holes: _____

Type of explosive to be utilized: _____

Normal charge expressed in pounds: _____

Distance between shot holes: _____

Name, address and telephone number of party manager or crew chief in charge of operations: _____

Proposed date of:

Commencement _____

Completion _____

Name and address of geophysical company for which such work is to be performed: _____

The undersigned Applicant acknowledges by the execution hereof that this Application is filed for purposes of conforming with the requirements of Acts 1991, No. 5, and that any operation which Applicant herein is granted a permit to perform shall be subject to and in conformity with the provisions of said Act and all rules, regulations and orders of the Arkansas Oil and Gas Commission applicable thereto.

Applicant further agrees that it shall neither enter nor permit the entry upon any lands for the purpose of conducting such seismic operations without having first secured a valid permit or permits from the owner or owners thereof granting Applicant herein the right of entry.

CERTIFICATE

I declare under the penalties of perjury that this report has been examined by me and to the best of my knowledge is true, correct and complete.

By: _____
Applicant Date

Printed Name

ARKANSAS OIL AND GAS COMMISSION
2215 West Hillsboro · P.O. Box 1472
El Dorado, Arkansas 71731-1472

PERMIT TO CONDUCT SEISMIC OPERATIONS

Applicant _____ Permit No. _____
Address _____ Date of Issuance: _____
City _____ State _____ Zip _____
Telephone _____ Fax _____ E-Mail _____

Permit No. _____ is hereby approved for purposes of authorizing the Applicant ("Permittee") to perform and conduct the seismic operations contemplated thereunder; provided, however, that this Permit and the rights of Permittee thereunder shall be subject to revocation should the information set forth and contained within said Application be determined to be false or in the event Permittee shall intentionally make or cause to be made any false entry or statement of fact in any report required to be made by Acts 1991, No. 5 or within any report required to be made by Permittee by any rule, regulation or order of the Arkansas Oil and Gas Commission as made thereunder.

This Permit shall otherwise remain the force and effect for a period of one (1) year from and after the date of issuance thereof.

ARKANSAS OIL AND GAS COMMISSION

By: _____

Printed Name and Title

ARKANSAS OIL AND GAS COMMISSION

2215 West Hillsboro · P.O. Box 1472
El Dorado, Arkansas 71731-1472

SEISMIC BOND

KNOW ALL MEN BY THESE PRESENTS:

THAT _____
whose address is _____
_____, as Principal
and _____, as Surety,
acknowledge themselves to be jointly and severally obligated to the State of Arkansas, for the use
and benefit of the Arkansas Oil and Gas Commission, in the penal sum of **FIFTY THOUSAND
DOLLARS (\$50,000.00)**, lawful money of the United States, conditioned as follows:

If the undersigned Principal shall comply with Acts 1991, No. 5, of the State of Arkansas as
by law required and such orders, rules and regulations of the Arkansas Oil and Gas Commission as
promulgated thereunder, then this Bond shall become null and void, otherwise to remain in full force
and effect.

It is further understood and agreed that this Bond shall remain in force and effect until
cancelled or released by the Director or Production and Conservation of the Arkansas Oil and Gas
Commission and shall be binding upon the undersigned Principal and Surety and upon their
respective heirs, executors, administrators, successors and assigns.

DATED this _____ Day of _____, 20_____.

("PRINCIPAL")

("SURETY")

Printed Name

Printed Name

Approved this _____ day of _____, 20_____.

ARKANSAS OIL AND GAS COMMISSION

By: _____

Signature
Director of Production and Conservation

SEISMIC RELEASE

For a good and valuable consideration to the undersigned, paid by _____
 _____ ("Contractor") the receipt and adequacy of which is hereby
 acknowledged by _____ ("Surface Owner") of the following
 described tract located in _____ Arkansas, to-wit:

do hereby release and forever discharge Contractor, its officers, employees, agents and subcontractors from any and all claims, demands and liabilities for loss or injury arising as a consequences or as a result of seismic operations conducted by said Contractor upon or near the above described lands under the terms of the Seismic Permit granted by Surface Owner to Contractor for purpose of authorizing such activity.

Surface Owner hereby authorizes the Arkansas Oil and Gas Commission to release said Contractor and its surety from any and all further liability under the Bond filed with said Commission as required under the provisions of Acts 1991, No. 5.

WITNESS our hands and seals on this _____ day of _____ 20 _____.

WITNESS:

Surface Owner

Printed Name